IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **Crl.R.No.544 of 1993**

DATE OF DECISION: December 14, 2007

GURCHARAN SINGH ...PETITIONER

VERSUS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. K.S. CHEEMA, ADVOCATE FOR THE PETITIONER.
MR. D.S. BRAR, DAG, PUNJAB.

ASHUTOSH MOHUNTA, J.(ORAL)

The petitioner has filed this revision petition against the judgement dated 18.10.1991, passed by Sub Divisional Judicial Magistrate, Rajpura and the judgement dated 29.07.1993, passed by the Addl. Sessions Judge, Patiala vide which the petitioner has been convicted under Section 11(1) read with Section 3(1) and 8(1) of the Punjab Regulation of Colonies Act, 1975 (hereinafter referred to as 'the Colonies Act') and has been sentenced to undergo R.I. for 1 year and to pay a fine of Rs.2000/-.

The case of the prosecution in brief is that the petitioner was the owner of land situated in Khasra No.386, 387, 388, Khewat No.303 at village Dhakansu Kalan in district Rajpura. The petitioner is alleged to have divided the aforementioned land into small plots and sold the same for residential, commercial and industrial purposes without getting proper sanction from the Government. In the complaint it was alleged that as the petitioner has set up a colony as defined in Section 2(c) of the Colonies Act

by carving out small plots to different persons, therefore, he is guilty of having committed an offence convicted under the provisions of the Colonies Act.

On the complaint filed by Sukhpal Singh, Junior Enginner, Housing Urban Development, Punjab, the petitioner was challaned under Section 11 of the Colonies Act. In order to prove its case the prosecution examined as many as 18 witnesses. Almost all the witnesses who had purchased the plots from the petitioner deposed before the Court that they had purchased the land for agricultural purposes. The petitioner was examined under Section 313 Cr.P.C., however, he led no evidence although due opportunity was provided to him.

The trial Court disbelieved the statements of some of the PWs wherein they had averred that had purchased the land for agricultural purposes and returned a finding of fact that the petitioner has been colonizing in violation of the provisions of the Colonies Act and accordingly, convicted the petitioner under Section 11 of the Colonies Act and sentenced him to undergo R.I. for 1 year and to pay a fine of Rs.2000/-. The appeal filed by the petitioner was dismissed by the Addl. Sessions Judge, Patiala vide his judgement dated 29.7.1993.

Mr. K.S. Cheema, counsel for the petitioner submits that the petitioner is alleged to have sold the plots between the period 10.2.1982 upto 7.9.1983. He further submits that the petitioner has been facing the agony of long and protracted trial since the year 1986, and has thus suffered the litigation for more than 21 years. Learned counsel further submits that the petitioner owned land in Dhakansu Kalan which at the relevant time of sale of plots was neither within the municipal limits of Rajpura town nor

was even adjoining at that time. Learned counsel submits that although the village now adjoins the municipal limits of Rajpura town but at the time of sale of plots it was far away from the same. Learned counsel further submits that the land of Gurmukh Singh who was the owner of adjoining land belonging to the petitioner was also challaned under Section 11 of the provisions of the Colonies Act. However, the complaint in his case was dismissed by the Judicial Magistrate Ist Class, Rajpura and the decision has been upheld right upto the High Court, therefore, the petitioner be also acquitted of the charges on the basis of the decision in the aforementioned case.

Learned counsel for the State, however, submits that the petitioner is not entitled to any leniency as he had indulged in illegal colonization without seeking permission from the State Government. It is further submitted that the State has to make provisions for sewerage and other amenities in a case of haphazard development.

After hearing the counsel for the parties, I am of the considered opinion that village Dhakansu Kalan was not adjoining the Rajpura town at the time when the petitioner carved out plots and sold the same to different persons. The facts in the case of Gurmukh Singh in which the complaint was dismissed cannot be said to be at par with the present case. Moreover, the evidence in this case was entirely different and the same cannot be read as part of this case and hence no parity can be claimed by the petitioner with the case of Gurmukh Singh. Nevertheless, the petitioner has contravened the provisions of Section 11 of the Colonies Act and thus he has rightly been convicted under the said provisions. The petitioner has suffered a long and protracted litigation for more than 20 years. By taking into the totality

of circumstances in this case, I uphold the conviction of the petitioner as ordered by the Courts below. However, the sentence of the petitioner is reduced to the one already undergone by him.

The revision petition is disposed of in the aforementioned terms.

December 14, 2007 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**